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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/373,585	08/13/1999	NOBUHIKO OGURA	Q55432	2737

7590 07/13/2004  
SUGHRUE MION ZINN MACPEAK & SEAS  
2100 PENNSYLVANIA AVENUE N W  
WASHINGTON, DC 200373202

EXAMINER

LU, FRANK WEI MIN

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/373,585

Applicant(s)

OGURA, NOBUHIKO

Examiner

Frank W Lu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6, 7 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6, 7 and 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5/2004.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's response to the office action filed on April 29, 2004 has been entered. The claims pending in this application are claims 6, 7, and 21-25. Rejection and/or objection not reiterated from the previous office action have been withdrawn in view of the response filed on April 29, 2003.

### ***Information Disclosure Statement***

2. Foreign Office Action dated September 24, 2003 in Form 1449 filed on April 29, 2004 has not been considered since applicant does not provide English translation for this document.

### ***Claim Objections***

3. Claim 21 is objected to because of the following informality: "the system" should be "the apparatus".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 6, 7, 21, 22, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Stimpson ( US Patent No. 6,037,186, filed on July 16, 1997) as evidence by US Patent No. 4,877,745 (Hayes *et al.*, published on October 31,1989).

Stimpson teaches parallel production of high density arrays.

Regarding claims 6, 22, and 25, since Stimpson teaches that an automated device to apply the multitude of reagents to a 21.5 foot sheet is assembled from an X-Y-Z table (e.g. Asymtek) fitted with a reagent dispenser, a step motor controlled take up spool and an adjustable drag pay-out spool (see column 8, third paragraph and Figure 2C ), Stimpson discloses a conveyor recited in claim 6. Stimpson teaches that, using reagent jet printing, lines of different DNA samples such as cDNA libraries are applied to the sheet in lines or otherwise a pin applicator so that multiple dots from the pin overlap to form a line wherein the different reagent lines on the sheet are formed as close together as possible and with minimum line width allowed by the printing method so that array density is maximized. For example, reagent jet printing is described in U.S. Pat. No. 4,877,745 and print lines with a width on the order of 0.001 inch (see column 7, lines 25-55). Since a plurality of jetting heads in the reagent jet printing taught by in US Patent No. 4,877,745 is arranged at predetermined or fixed interval (see US Patent No. 4,877,745, Figure 1), Stimpson as evidence by US Patent No. 4,877,745 (Hayes *et al.*,) teaches a plurality of applicators (ie., jetting heads) as recited in claims 6 and 25. Since the sheet with different DNA sample is cut with a razor blade (for example, see column 14, last paragraph), Stimpson discloses a cutting means as recited in claim 6. Although Stimpson as evidence by U.S. Pat. No. 4,877,745 (Hayes *et al.*,) does not specially indicate that their apparatus can perform the

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functions of the apparatus recited in claims 6 and 22, note that, while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (see MPEP 2114).

Regarding claims 7 and 21, since claim 6 is directed to an apparatus for manufacturing a test piece for use in biological analysis of a sample organism comprising a strip-like substrate bearing thereon numbers of known specific binding agents which are different from each other and are arranged in a line at predetermined intervals in the longitudinal direction of the strip-like substrate, the test piece recited in claim 6 and the binding agents recited in claims 6, 7 and 21 are not parts of the apparatus as recited in claim 6 and claims 7 and 21 are used to further limit the binding agents recited in claim 6. Therefore, claims 7 and 21 are anticipated by Stimpson as evidenced by US Patent No. 4,877,745.

Therefore, Stimpson as evidence by US Patent No. 4,877,745 teaches all limitations recited in claims 6, 7, 21, 22, and 25.

***Response to Arguments***

I. In page 5, third paragraph of applicant's remarks, applicant argues that "[T]he Examiner contends that Stimpson provides a cutting means. However, the mere fact that the roll becomes cut does not mean the apparatus includes the cutting means as claimed. For example, cutting performed by an operator may provide a cut. Under the holding of *In re Bell*, 26 USPQ2d 1529, (Fed. Cir. 1993), such does not meet all the requirements of an apparatus claim".

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection. First, Stimpson teaches a cutting means (see column 12, second paragraph and column 14, last paragraph). Second, although "the roll becomes cut does not mean the apparatus includes the cutting means", claim 6 does not require a physical connection between the cutting means and the convey or a physical connection between the applicators and the conveyor.

Therefore, the cutting means taught by Stimpson is a part of the apparatus taught by Stimpson.

II. In page 5, fourth paragraph of applicant's remarks, applicant argues that "[T]o the extent Stimpson and Hayes includes an XYZ table and applicator, the apparatus does not provide an apparatus for proving a strip like substrate. Fig. 1C of the Stimpson reference clearly show a disk array, rather than a strip."

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection. Since the phrase "for manufacturing a test piece for use in biological analysis of a sample organism" is an intended use of the apparatus recited in claim 6 (a functional limitation) and is not a structural limitation of claim 6, a test piece recited in claim 6 is not a part of the

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apparatus. Furthermore, since the phrase “test piece for use in biological analysis of a sample organism comprising a strip-like substrate bearing thereon numbers of known specific binding agents which are different from each other and are arranged in a line at predetermined intervals in the longitudinal direction of the strip-like substrate” is used to limit the test piece, the strip-like substrate recited in claim 6 is not a part of the apparatus and is not a structural limitation of the apparatus recited in claim 6. The apparatus recited in claim 6 only requires a plurality of applicators, a conveyor and a cutting means.

III. In page 5, last paragraph bridging to page 6, first paragraph of applicant’s remarks, applicant argues that “[T]he Examiner has not established that the functional limitations of claim 6 are taught in the prior art. In particular, Stimpson does not teach the functional aspects of the claims as indicated by the Examiner. See page 9 of the Office Action. Therefore, claim 6 and its dependent claims should be deemed patentable”.

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection. MPEP 2114 (R-1) clearly states that “[W]hile features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board’s finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). ‘[A]pparatus claims cover what a device is, not what a device does.’ *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464,

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1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)” and “[A] claim containing a ‘recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus’ if the prior art apparatus teaches all the structural limitations of the claim. *Exparte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Since Stimpson as evidence by US Patent No. 4,877,745 teaches all structural limitations of claim 6 and applicant has no evidence to show that the apparatus taught by Stimpson as evidence by US Patent No. 4,877,745 cannot perform functions recited in claim 6, the examiner considers that Stimpson as evidence by US Patent No. 4,877,745 teaches all limitations recited in claim 6.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stimpson (July 16, 1997) as evidence by US Patent No. 4,877,745 as applied to claims 6, 7, 21, 22, and 25 above, and further in view of Shuminov (US Patent No. 5,808,554, 102(e) date: July 2, 1997).

The teachings of Stimpson have been summarized previously, *supra*.

Stimpson does not disclose a conveyor belt as recited in claim 23 and a guide rail as recited in claim 24. Since Stimpson teach that the sheet with different DNA samples is cut with a



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razor blade (for example, see column 14, last paragraph), the cutting means (ie., the razor blade) must have a cutting edge as recited in claim 24.

Shuminov teaches a conveyor belt and a guide rail. He teaches moisture detecting liner for a diaper and a process for manufacture thereof a production line for manufacturing the diaper. Figure 4a shows schematically a production line for manufacturing the diaper. The production line comprises a drum 48 constituting a first roll, which feeds a tissue-type material 49 under a guide rail 50 so that, as the absorbent layer 45 passes underneath the **guide rail 50**, the tissue-type layer 49 is compacted on to the absorbent layer 45 thus forming a composite layer which is cut by a **cutter 51** so that the tissue-type layer 49 extends along the complete length of the absorbent layer 45 and across the narrow section of its I-shaped contour. The composite layer passes along the **conveyor belt 46**, downstream of which are disposed, on opposite sides of the conveyor belt 46, a pair of drums 52 and 53 constituting, respectively, second and third rolls, which feed corresponding innermost and outermost layer material 54 and 55 so as to cover opposite surfaces of the composite layer comprising the absorbent layer 45 and the tissue-type layer 49. The resulting assembly is cut by a cutter 56 so as to produce the finished diaper (see Figure 4a and column 6, lines 5-21). The phrase “wherein said cutting edge moves along said guide rail” recited in claim 24 is a function of the cutting edge and is not a structural limitation.

Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to have added a conveyor belt as recited in claim 23 and a guide rail as recited in claim 24 into the apparatus recited in claim 6 in view of the patents of Stimpson and Shuminov. One having ordinary skill in the art would have been motivated to do so because addition of a guide rail and a conveyor belt onto the apparatus recited in claim 6

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would add more functions onto the apparatus recited in claim 6 such as compacting a sheet (ie., a composition layer) by passing the sheet underneath of the guide rail and delivering a sheet (ie., a composition layer) to a cutter using the conveyor belt so that the sheet is cut to a designed size (ie., finished diaper ) (see Shuminov, column 6, lines 5-21). One having ordinary skill in the art at the time the invention was made would have been a reasonable expectation of success to add a conveyor belt as recited in claim 23 and a guide rail as recited in claim 24 into the apparatus recited in claim 6.

***Response to Arguments***

I. In page 6, second and third paragraphs of applicant's remarks, applicant argues that: (1) "[A]s a preliminary matter, Shuminov is nonanalogous art. To rely on a reference under 35 U.S.C. § 103, it must be analogous art"; and (2) "[S]huminov pertains to the detection of moisture in a diaper by placing an electrode in the liner of the diaper. See Abstract. Therefore, it is unlikely that an inventor would look to a process for creating a diaper for teaching the apparatus for a strip-like substrate containing binding agents, as described in the present invention. Further, Shuminov including various compaction and assembly for a diaper would not be reasonably pertinent to the precision required in substrate assembly. Therefore, Shuminov may not be combined with Stimpson to teach elements of claims 23 and 24".

These arguments have been fully considered but they are not persuasive toward the withdrawal of the rejection. First, since the apparatus recited in claim 6 only requires a plurality of applicators, a conveyor, and a cutting mean, claim 6 is not only directed to an apparatus that is only used in biological field. Second, although Shuminov's patent is not from biological field, Shuminov's patent is considered as an analogous art because both Stimpson (see column 8, third

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paragraph and Figure 2C) and Shuminov (see Figure 4a and column 6, lines 5-21) teach conveyor and “conveyor” is a key element to connect Stimpson’s patent and Shuminov’s patent. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to have added a conveyor belt into the apparatus taught by Stimpson after he or she carefully studies all prior art related to “conveyor” because addition of a guide rail and a conveyor belt onto the apparatus recited in claim 6 would add more functions onto the apparatus recited in claim 6 such as compacting a sheet (ie., a composition layer) by passing the sheet underneath of the guide rail and delivering a sheet (ie., a composition layer) to a cutter using the conveyor belt so that the sheet is cut to a designed size (ie., finished diaper ) (see Shuminov, column 6, lines 5-21).

II. In page 6, last paragraph of applicant’s remarks, applicant argues that “the Examiner's rejection of claims 23 and 24 is deficient for the same reasons indicated above. In particular, the Examiner has not established that the functional aspects of the claims are taught in the prior art.”.

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection. MPEP 2114 (R-1) clearly states that “[W]hile features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board’s finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). ‘[A]pparatus claims cover what a

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device is, not what a device does.’ *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)” and “[A] claim containing a ‘recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus’ if the prior art apparatus teaches all the structural limitations of the claim. *Exparte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Since Stimpson as evidence by U.S. Pat. No. 4,877,745 in view of Shuminov teach all structural limitations of claims 23 and 24 and applicant has no evidence to show that the modified apparatus with added conveyor belt and guide rail cannot perform functions recited in claims 23 and 24 (said conveyor belt continuously conveys said strip-like substrate and said cutting edge moves along said guide rail), the examiner considers that Stimpson as evidence by US Patent No. 4,877,745 in view of Shuminov teach all limitations recited in claims 23 and 24.

III. In page 7, first paragraph of applicant’s remarks, applicant argues that “[T]he cited cutter of the diaper-making device is inapplicable to the field of invention as previously indicated in the Brief on Appeal, cutting devices in one field are not applicable across all fields. *A.J. Dees Co. v. U.S. Slicing Mach. Co.* 21 F.2d 812 813 (7<sup>th</sup> Cir. 1927)”.

This argument has been fully considered but it is not persuasive toward the withdrawal of the rejection. First, since the apparatus recited in claim 6 only requires a plurality of applicators, a conveyor, and a cutting mean, claim 6 is not only directed to an apparatus that is only used in biological field. Second, the rejection is not based on that “cutting devices in one field are not applicable across all fields” as argued by applicant. Third, although Shuminov’s patent is not from biological field, Shuminov’s patent is considered as an analogous art because both

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Stimpson (see column 8, third paragraph and Figure 2C, and column 14, last paragraph) and Shuminov (see Figure 4a and column 6, lines 5-21) teach conveyor and cutting means wherein “conveyor” and “cutting means” are two key elements to connect Stimpson’s patent and Shirninov’s patent. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to have added a conveyor belt and a guide rail onto the apparatus taught by Stimpson after he or she carefully studies all prior art related to “conveyor” and “cutting means” because addition of a guide rail and a conveyor belt onto the apparatus recited in claim 6 would add more functions onto the apparatus recited in claim 6 such as compacting a sheet (ie., a composition layer) by passing the sheet underneath of the guide rail and delivering a sheet (ie., a composition layer) to a cutter using the conveyor belt so that the sheet is cut to a designed size (ie., finished diaper ) (see Shuminov, column 6, lines 5-21).

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. No claim is allowed.


10. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CAR § 1.6(d)). The CM Fax Center number is either (703) 308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Lu, Ph.D., whose telephone number is 571-272-0746. The examiner can normally be reached on Monday-Friday from 9 A.M. to 5 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion, can be reached on (703) 308-1119.

Any inquiry of a general nature or relating to the status of this application should be directed to the Chemical Matrix receptionist whose telephone number is (703) 308-0196.

Frank Lu  
PSA  
July 8, 2004

  
**FRANK LU**  
**PATENT EXAMINER**